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MICHAEL RODAK, JR.

No. 80-195

In The

Supreme Court of the United States

October Term, 1980

METROMEDIA, INC.,

Appellant,

vs.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Appellees.

PACIFIC OUTDOOR ADVERTISING CO. INC.,

Appellant,

vs.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, VOYD BEIGHTS, Zoning Administrator of the City of San Diego, and DOES 1 through 10, inclusive,

Appellees.

On Appeal From the Supreme Court of California

BRIEF AMICI CURIAE ON BEHALF OF APPELLANTS METROMEDIA, INC., and PACIFIC OUTDOOR ADVERTISING CO., INC., URGING REVERSAL

Amici

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*Amici Curiae adopt appellants' Questions Presented for Review, table of authorities, citations to the opinions and the judgments delivered in the Courts below, statement of the grounds on which jurisdiction is invoked, Constitutional provisions, statutes, ordinances, etc., which their case involves, summary of argument and argument.

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INTERESTS OF AMICI CURIAE

Mr. and Mrs. Robert P. Pope have been the sole owners of C & U Poster Advertising Co. (hereinafter C & U Poster) since 1970, having had a partial ownership interest since 1948. Mrs. Pope's father, F. H. Gillingham, bought the business in the early 1920's, the company having been incorporated in 1912 under a different name. The undersigned is the son of Mr. and Mrs. Pope; the grandson of F. H. Gillingham, the vice-president of C & U Poster,

and as a partner in the law offices of Busch, Harrington & Porter, is the attorney for the Popes and C & U Poster in litigation challenging the validity of sign ordinances of the cities of Champaign and Urbana, Illinois. Those ordinances would, if valid, obliterate the outdoor advertising industry in those cities in much the same manner as the San Diego Ordinance would do so in San Diego, California.

This brief is filed to acquaint this Honorable Court with the catastrophic effects that a San Diego-type sign ordinance would have on outdoor advertising from the perspective of a small, second generation family-owned outdoor advertising business and its advertisers.

Letters of consent to the filing of this brief have been obtained from the parties and filed with the Clerk of this Court.

STATEMENT OF THE CASE

1. Amici's Business and History:

C & U Poster is and long has been engaged in the outdoor advertising business in and about Champaign and Urbana, Illinois, in the same manner as Appellants Metromedia, Inc. and Pacific Outdoor Advertising Co., Inc. have been so engaged in San Diego. Accordingly, C & U Poster owns, leases or licenses real estate locations upon which it has erected its outdoor advertising structures (billboards and painted bulletins), the faces of which are rented, sold or donated to users for the purpose of communicating their message(s) to the driving, riding and walking public.

C & U Poster's structures have been customary uses in Champaign-Urbana for more than sixty (60) years, and the Popes believe them to be compatible with other commercial uses. C & U Poster's structures are located in the business and industrial zones of Champaign and Urbana, and were legally erected, either having been built under permit (under former sign ordinances) or having been built outside the cities and prior to annexation of their locations by the cities. The physical useful remaining life of each of C & U Poster's structures exceeds forty (40) years.

C & U Poster is a small company compared to Appellants, having only about 270 advertising structures, of which approximately 40 are in Urbana and 110 in Champaign, which cities comprise the only major markets in C & U Poster's advertising area. *Amici's* structures mostly consist of standardized poster panels (12 feet by 25 feet), painted bulletins (12 feet by 44 feet), and "junior panels" (6 feet by 12 feet). With few exceptions, *Amici's* structures are "off-premise" or "off-site" advertising, in that they convey messages pertaining to items not sold or offered at the structure's location.

Amici also own the land upon which approximately 64 of the approximately 150 Champaign-Urbana structures are located. Six of these parcels are singularly useful for outdoor advertising, being located in business or industrial districts, but being too small to be useful for anything else under the zoning ordinances (e. g., some of the parcels contain fewer than 1000 square feet).

C & U Poster employs an average of nine local employees, including management personnel, a sales man-

ager, a secretary, bill posters, a maintenance crew, and a sign painter. Approximately one-half of its revenues are brought in from outside the locality, but most of its overhead is spent locally, including all of its some $100,000.00 annual payroll. *Amici* pay local real estate and corporate personal property taxes as well as federal and state income taxes, as a result of their business.

Approximately 28 of the 40 structures in Urbana, and 40 of the 110 structures in Champaign, are legal and conforming under the State Highway Advertising Control Act. However, the demographical distribution of those structures—if only they were allowed to remain—would not be suitable for the operation of outdoor advertising in Champaign-Urbana.

The Popes and Mrs. Pope's parents have devoted most of their working lives to the development of their business of outdoor advertising. A substantial portion of the Popes' net worth is represented by their ownership of C & U Poster and its assets, which are largely in the form of its advertising structures.

2. The Cities of Champaign and Urbana:

Champaign and Urbana are "twin cities" having a joint population (including the University of Illinois) of approximately 120,000 persons. They comprise essentially one market area in a county containing approximately 165,000 persons in 1970. Champaign-Urbana is one of the leading downstate traffic centers, being served directly by three railroads, two airlines, bus lines, and at least four major state and federal interstates and highways. The cities are diverse, containing business, commer-

cial and industrial areas, residential areas, and agricultural areas. Their industrial communities are widely diversified, including paper products, sporting equipment, chemical supplies, castings, burial vaults, laboratories, food services, and many others. Champaign and Urbana are located in the heart of some of the most valuable and productive agricultural land in the world.

3. C & U Poster's Customers and Their Reliance on the Unique Medium of Outdoor Advertising:

C & U Poster's advertisers, which are both local and national, find value in conveying their messages to the communities via outdoor advertising. For example, the local banks have been advertising regularly with C & U Poster for over forty years. Two of them regularly advertise on five or more structures each; a third has maintained a large painted bulletin for about fifteen years. Their messages vary, but nearly always are designed to inform the public of various services they offer, current interest rates, the availability of loan-funds, new savings programs, etc.

Numerous local motels advertise on *Amici's* structures, both to inform the motoring public of their existence and to provide directions to their locations. Off-site advertising is uniquely suited to this task, as no other media can even begin to substitute for outdoor advertising in conveying such information to incoming or traveling motorists, with whom motels must communicate.

Several local restaurants rely heavily or exclusively on *Amici's* outdoor advertising, due to its unique ability to reach the customers necessary to the restaurant busi-

ness, and due to its low cost and high efficiency. For the same reasons, numerous agricultural products are advertised on *Amici's* structures in and about Champaign-Urbana.

Due to the substantially lower cost of advertising (per person exposed), several small businesses—particularly ones that are off the main thoroughfare—need and rely on outdoor advertising full-time, and would be placed at a severe competitive disadvantage if the medium were unavailable.

Additionally, C & U Poster regularly conveys information for local automobile dealers, motorcycle and snowmobile dealers, a local department store, savings and loan associations, campus pizza parlors, soft drinks, beer (although *Amici's* policies prevent their advertising hard liquor), programs at the University of Illinois, real estate agents and firms, cigarette manufacturers, insurance companies and agencies, the annual Ringling Brothers Circus, and many others.

Further, under a long-term policy, *Amici* regularly provide a substantial amount of "public service" advertising, some of which is paid for, but most of which is donated. For example, six locations have been donated in conjunction with a local bank for the United Way campaign. For many years, numerous posters and bulletins have been posted for churches, religious organizations, gasoline conservation ("Don't Be Fuelish", etc.), crime prevention, traffic safety ("Buckle Up for Safety"), the Rotary 4-Way Test, the Lion's Candy Day sales, the Salvation Army, the U. S. Army, Navy, Marine and Air Force Recruiting programs, the nursing profession, and many

others. *Amici* have requested the release of American hostages from Iran and have posted numerous political cartoons and comments. Preceding each election, a substantial portion of C & U Poster's business consists of political advertisements.

C & U Poster lives its motto: "If you have goods to sell and messages to tell, use outdoor."

4. The Champaign and Urbana Ordinances and the Illinois Highway Advertising Control Act:

Until 1971 in Urbana and 1975 in Champaign, the local ordinances allowed outdoor advertising structures in commercial and industrial areas, subject only to their satisfying wind load requirements, fire safety requirements, and the obtaining of permits for reasonable fees.

However, in 1975, Champaign passed an ordinance substantially similar to San Diego's, which purports to entirely prohibit all "off-premise" signs, *regardless of size,* from within the city boundaries, and which purports to require the removal of all such signs within five years without compensation. C & U Poster's structures are included within the prohibited class of "off-premise" signs.

In 1971, Urbana passed an ordinance which purports to exclude all off-premise signs from all zones but the industrial districts; imposes impossible restrictions on the industrial districts; and requires all non-conforming signs to be removed within five years, or if a permit has been granted, within ten years from the granting of the permit, all without compensation. Following a recent and sweeping re-zoning, all but about four of C & U Poster's structures are located in "commercial" districts (many of

which were formerly zoned "industrial"), and are thusly prohibited.[1]

Directly at odds with Champaign's and Urbana's sign ordinances is the preamble to the Illinois "Highway Advertising Control Act of 1971" (Illinois Revised Statutes, 1973, Ch. 121, Sec. 501, *et seq.*), which states in part as follows:

> The General Assembly further finds and declares that outdoor advertising is a legitimate, commercial use of private property adjacent to roads and highways; that outdoor advertising is an integral part of the business and marketing function, and an established segment of the national economy which serves to promote and protect private investments in commerce and industry and should be allowed to operate in *business areas.* (Emphasis added.)

The local ordinances—which would cause the total prohibition of outdoor advertising within their city lim-

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1 All but approximately four of *Amici's* forty structures must be removed from Urbana. The allowance of billboards in the industrial districts appears more generous than it is; because off-premise signs are deemed to be a "principal" use, they must be alone on the property. Only industrially zoned lots with at least 100 feet of frontage and 10,000 square feet of lot size qualify. Not only are the industrial zones generally useless for outdoor advertising because of their locations, but the use of such prohibitively large and expensive lots cannot be economically justified for outdoor advertising purposes. Outdoor advertising is uniquely suited as an "accessory" use, and has been customarily used for such in Champaign and Urbana. For instance, many local land and building owners generate rent income from C & U Poster's placement of a billboard on the edge of their lot or the wall of their building. Urbana's ordinance purports to disallow such accessory uses, and is tantamount to a prohibition of the medium of outdoor advertising from within its boundaries.

its—are clearly contradictory to the State law, which State law succinctly declares that outdoor advertising is a useful and legitimate business.

5. The Effects of the Champaign and Urbana Ordinances on C & U Poster, the Popes, and Their Advertisers:

Mr. and Mrs. Pope have spent much of their productive lives in building a business enterprise that has served the business and charitable community for many years. The enforcement of the ordinances in Champaign and Urbana will clearly wipe out not only their life-long efforts, but will deprive their advertisers from the dissemination of their messages via outdoor advertising.

It is estimated that the cost alone of removing C & U Poster's structures from Champaign and Urbana would exceed $45,000.00. The salvage value of their structures would be practically nil, and *Amici* would not be able to relocate their structures within these markets. The structures remaining in the surrounding small towns are not sufficient in number to justify *Amici's* continuing in business, and would have to be abandoned, removed, or sold, if possible, to companies in other cities. The economic effects of enforcing the ordinances would be devastating to *Amici*. If our federal and state constitutions are to have any meaning, neither the medium of outdoor advertising nor the assets which have been built up over some sixty years, should be so summarily destroyed.

Amici's advertisers—both local and national—would be forced to abandon an entire medium of communication in the Champaign-Urbana market place, whether they now

use advertising as a supplement to other media or rely exclusively on it for conveying their messages to the public. No longer would they be free to express and disseminate their ideas outdoors, and no longer would the public enjoy the right to receive information from the medium of outdoor advertising, all without regard to the value, merit, or worth of the information formerly disseminated by this medium of communication.

6. Amici's Present Litigation:

Amici have challenged their validity of both the Champaign and Urbana ordinances in the Circuit Court of Champaign County, Sixth Judicial Circuit, in lawsuits No. 76-C-22 and 76-C-1070. Two of the main issues raised in those suits are whether the First Amendment rights of *Amici* and their advertisers have been abridged, and whether the cities abused and exceeded their authority under the police power by adopting the ordinances. Champaign has agreed not to enforce its ordinance pending this litigation, and Urbana has been enjoined from enforcing its ordinance pending this litigation. The two lawsuits have been consolidated for trial, and the trial has been docketed for February, 1981.

CONCLUSION

The egregiously cavalier treatment of private property and the outdoor advertising industry by the San Diego City Council should not be countenanced. Outdoor advertising involves pure communication and dissemination of

ideas and information. Its communicative qualities are useful, economical, and unique. It is a legitimate and long-existent component of the local, state and national business communities, and must be declared to fall within the penumbra of the First Amendment so that courts and legislatures will be required to accord it the Constitutional rights to which it is entitled. If regulations are necessary, then they should regulate in a manner no more extensive than is necessary to further legitimate governmental interests. A total prohibition is overbroad and the California Supreme Court should be reversed.

Respectfully submitted,

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